IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11264 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHUBHA BALUBHAI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR BP MUNSHI for Petitioner

MS MANISHA LAVKUMAR AGP for Respondent No. 1

MR KAMAL B TRIVEDI with KJ MACHWAN for M/s.TRIVEDI & GUPTA for Respondent No.4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2000

CAV JUDGEMENT

The petitioner herein is serving as a Police Inspector in Jamnagar 'B' Division Police Station since 11th November, 1995. He had joined services in the said

Department as a Police Constable in the year 1965 and had thus rendered 35 years of meritorious and satisfactory services. However, by Order dated 17th June, 1999 issued by the DSP, Jamnagar, the petitioner is transferred to Jamnagar City `B' Division Police Station from ACB Jamnagar. The petitioner has recently taken over the charge as Police Inspector, Jamnagar City `B' Division Police Station on and with effect from 21st June, 2000. The elections of the Corporator of Jamnagar Municipal Corporation and members of the Panchayat were conducted on 17th September, 2000 and 24th September, 2000 respectively and the counting of votes had been conducted on 29th September, 2000 and 30th September, 2000. The petitioner had been on duty due to elections on 29th September, 2000 from 6.30 hours to 24.00 hours and on 30th September, 2000 from 7.30 hours to 24.00 hours and on 1st October, 2000 throughout the counting and was supervising law and order situation with the help of the other police personnel. The counting process of election of candidates of Municipal Corporation and Panchayat members was going on 29th & 30th September, 2000 at Jamnagar. On the midnight of 1st October, 2000 beginning from 00.00 hours while the Police Constables named Shri N.H Der and Shri Vasantkumar Ramjibhai were on duty at the midnight of MP Shah Commerce College and at about 00.05 hours, some political agents or interested persons of the candidate of BJP were illegally trying to enter into the said premises as they were not holding any pass or permit and tried to enter with the Cellular Phone which was impermissible to be kept with. The Police Constables on duty politely prevented them from illegal entry and on seeing this, the respondent no. 4 who was present there around alongwith BJP President, Shri Hitenbhai Bhatt and 8 to 10 persons got unnecessary exited and infuriated and insulted those police personnel. The news item published in the daily newspaper `Aaj Kaal' dated 13th October, 2000 wherein a prominent political leader of Bharatiya Janata Party and the Chairman of Gujarat Tourism Development Corporation, etc. Smt. Vasuben Trivedi had brought undue political pressure on the administrative machinery of the State Government to transfer the petitioner from Jamnagar to any other place outside the City of Jamnagar and she challengingly asked the petitioner to transfer anywhere other than Jamnagar. The respondent no. 3-the District Superintendent of Police, Jamnagar has issued a transfer order dated 25th October, 2000 transfer the petitioner from Jamnagar City 'B' Division Police Station to CID Crime Branch. It is this order of transfer, which is brought under challenge by the petitioner herein.

When the matter came up for admission hearing on 1st November, 2000, this Court [Coram : J.R Vora, J.], issued notices to the respondents making it returnable on 6th November, 2000 with a direction to keep ready in the Court, all the relevant records pertaining to the petitioner, on the returnable date. The respondent nos. 1,2 and 3 have filed their detailed reply against the present petition and the respondent no. 4 has also filed his reply on 13th November, 2000. However, no rejoinder has been filed by the petitioner.

I have heard the learned advocates appearing for the respective parties.

The main grievance of the learned advocate Mr. Munshi appearing for the petitioner is that because of the incident which took place on 29th/30th September, 2000, the petitioner is sought to be transferred from his present position as Police Inspector at Jamnagar City 'B' Division Police Station. According to learned advocate Mr. Munshi, it is because of the complaint made to the higher officers in the State that the petitioner has been placed under transfer orders. Mr. Munshi further submitted that the respondent no. 4 has given open threats to the petitioner that he will definitely transfer the petitioner out of the Jamnagar City, and therefore, according to Mr. Munshi, there is no administrative reason and/or public interest involved in the present transfer of the petitioner. Mr. Munshi has further submitted that the incident occurred on the given day has been noted in the Station Dairy and this fact has not been disputed or denied by the respondent no. 4 in her affidavit. Moreover, the articles which have been published and produced at Annexure A & B to the petition have also not been denied by the respondents, and therefore, this transfer is politically motivated and the respondent nos. 2 & 3 have not applied their mind before passing the transfer order of the petitioner. According to Mr. Munshi, even the guidelines issued by the State Government have been violated in making transfer order of the petitioner. Mr. Munshi has relied upon Annexures C, D & E and paragraph Nos. 5/1, 5/3 and 6 of the petition. However, Mr. Munshi has submitted that the family of the petitioner is residing at Ahmedabad and there is no question of any hardship to the petitioner. Mr. Munshi has submitted that the respondent no. 3 has not filed any reply and when specific allegations have not been denied, it amounts to admission on the part of the said respondent no. 3. In short, the submission of Mr. Munshi is that because of the incident which occurred with Mrs. Vasuben Trivedi, the respondent no. 4 is the

only ground to transfer the petitioner otherwise there is no reason or cause to transfer him. Mr. Munshi has relied upon the decisions rendered by the Apex Court in AIR (1997) SC 3067; 1986 (4) SCC 131; 1995 (2) GLH 254; 37 (1) GLR 254.

As against the above submissions, learned AGP Ms. Manisha Lavkumar submitted that the petitioner wants to remain at Jamnagar because he is likely to be retired in the year 2002. She also submitted that entry which has been made by the petitioner is unilateral entry which cannot be considered to be a legal evidence. She also submitted that some incident occurred cannot be linked with the transfer. She submitted that allegations of mala fide are very easy to be made against any officer and in such circumstances, while working as a Police Inspector, incidents are bound to happen and on that occasion it is the duty of the higher officer to see the conduct of such employee and also the public interest as well as the administrative interest and to post a particular employee in a particular place so that the administration can be smoothly run. Therefore, this aspect is required to be considered by the higher authority and any interference in such discretionary power from the Court is not warranted. She also submitted that the transfer order has been given effect immediately, since as per the rules, if a police officer is placed under transfer he cannot perform his duties at a given place and if he works then such action is considered to be without jurisdiction.

Learned advocate Mr. Mackwan appearing for the respondent no. 4 has submitted that it is the routine, simple transfer of the petitioner who was at Jamnagar for more than 3 and half years. Mr. Mackwan has submitted that the respondent no. 4 has not filed any complaint in respect of the incident in question. He submitted that there is conflict version and several contradiction in the petition filed by the petitioner, therefore, the petitioner has not been transferred because of the incident occurred with the respondent no. 4 when the respondent no. 4 has not filed any complaint to the higher authority. Mr. Macwan has relied upon some of the decisions reported in 1995 (1) LLJ 854; 1991 (2) LLJ 591 and 1990 (2) LLJ 95.

At the time of issuance of notice on 1st November, 2000, this Court had directed the respondents to keep ready in the Court all the relevant case papers ready for perusal. At the time of hearing this writ petition, I have personally gone through the original

file and the concerned Officer has specifically clarified the notes which have been made in the confidential filed of the petitioner herein. After perusing the original file, there appears to be no indication that the said transfer has been made because of the complaint lodged by the respondent no. 4. Further, there is no indication in the file about the incident as well as complaint, as alleged by the petitioner. On the contrary, it appears to be a routine transfer of nine officers.

It is inevitable to note that petitioner had accepted his post fully knowing that he has to work in a disciplined force and is liable to be transferred for administrative reasons. Further, the Police is a disciplined force. The top echelons of the department have a duty to ensure discipline of the force which ultimately is essential for the good of the public. Police is trusted for enforcing laws and for maintaining law and order in public interest. Moreover, transfer is an incident of service and no employee has any legal right against it. The contention of the petitioner that the transfer is bade as he was not given any opportunity to state against the transfer nor provided the data justifying his transfer, has no force. Natural justice only implies fairness in action. The policy decisions on grounds of expediency and in the overall interest of the administration cannot be interfered with as long as it is not punitive. Courts will not always be in a position to effectively evaluate the depth and impact of the problems and situations faced by the administration. Except, where the power is exercised mala fide or in total abuse, the Courts will be slow in interfering in such matters. A transfer can always be done in `public interest'. The term does not appear to be defined in any statute or Rule. It actually involves a wider concept. When one considers the suitability of a person to be retained in a particular post in public policy, morality, etc. will come into play. The totality of circumstances have to be considered in the matter. That no disciplinary action is taken against a Government servant for his activities while holding a particular post, does not always mean that he should be retained in the post. It all depends upon the facts and circumstances of each case. Thus, is it necessary that a Government should be heard before he is transferred from a post ? The answer is no. The position on this aspect is well settled by the decision in the matter of Vasu v. High Court of Kerala, reported in (1989) I CLR 154. I do not find any good reason to deviate from the finding given in the aforesaid decision. Transfer can be taken as made on administrative grounds as long as it is intended to protect the administration

from obstructive and harmful interference and intended to subserve internal discipline.

As regards mala fides. According to this Court, an action of an employer to the detriment of an employee need not always be taken as punishment. It will be justified as long as the action is not motivated by desire for punishment for the alleged fault or wrong. Punishment implies that a penalty inflicted for the commission of a wrong. When an employee is transferred because his presence may be harmful to the smooth running of an organization, the element of punishment is absent therein. The idea is not to keep the organisational activities to run smooth bereft of internal disharmony. In every case of erratic or inappropriate behaviour by a subordinate the employer is not bound to hold departmental action and to impose punishment. He is free to resort to other modes of ensuring smooth functioning also. Such action cannot be taken as mala fides. The consequent inconvenience or suffering by the transferred employee cannot be taken as punitive and interfered with. Further, no employee can successfully challenge order of transfer except when it is illegal; made otherwise than in public interest; for no administrative reasons or with malafides intentions. Therefore, inconvenience or civil consequences that might follow against the employee concerned cannot have overriding effect against the public interest involved.

In this regard, there are some of the observations made by the Apex Court in such a situation, which requires consideration. They are, in the matters of E.P Royappa v. State of Tamil Nadu & Anr., reported in [AIR (1974) SC 555] wherein in paragraph nos. 88 & 92 it has been observed thus;

> `88. Secondly, with the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these

posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When, in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new post does not give him the same amplitude of the powers which he had while holding the old post. But that does not make the transfer arbitrary. So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Arts. 14 & 16.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility... In this context, it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and theyare made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy,

> nor because they are highly placed in social life or administrative set up these considerations are wholly irrelevant unjudicial approach - but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand point that we must assess the merits of the allegations of mala fide made by the petitioner against the second respondent.'

In the matter between M. Sankaranarayanan, IAS v. State of Karnataka & Ors., {AIR (1993) SC 763} in paragraph-12, the Court has observed that, `..After considering the respective contentions of the learned counsel appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual material and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instant case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Ministers had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post is very senior officer of their confident to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority.'

In the matter between State of Madhya Pradesh & Ors. v. Sri S.S Kourav & Ors., reported in JT (1995) (2) SCC 498, in paragraph no. 4, the Court has observed that, `..it is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper place. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case, we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.' In the matter of N.K Singh vs. Union of India & Ors., reported in AIR (1995) SC 423 at paragraph Nos. 4,6,9, 22 & 23, the Court has observed that;

`4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such case would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

6. Learned counsel for the appellant did not dispute that the scope of Judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence

on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guidelines regulating such transfers amounting to arbitrariness. In reply, the learned Addl. Solicitor General and the learned for respondent no. 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest.

9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter of objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into the aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

22. However, acceptance of the appellant's claim would imply that no other officer in the C.B.I is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of any one to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superior taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a

subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norms of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

23. The private rights of the appellant being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to him. The appellant belongs to a disciplined force and as a senior officer would be making several transfers himself. Quite likely many of his men, like him, may be genuinely aggrieved by their transfers. If even a few of them follow his example and challenge the transfer in course, the appellant would be spending his time defending his actions instead of doing the work for which he holds the office. Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rate, only when a judicially manageable and permissible ground is made out. This litigation was illegally advised.'

Lastly, in the matter between Union of India & Ors. vs. S.L Abbas, reported in {AIR (1993) SC 2444} in paragraph no. 7, the Court has observed thus :

`7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind

> the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legal enforceable right."

In view of the observations made by the Apex Court in all the above referred cases, according to my opinion, in the present case, the transfer is not a malafide action and it does not amount to colourable exercise of power. It is a routine transfer made in the interest of the administration as well as in the public interest.

For all these reasons, I do not find any merit in this writ petition, the same is therefore, dismissed at the admission stage. Notice stands discharged with no order as to costs.

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Prakash*